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Multilingualism and the CBC Mandate: An Example of Ineffectual Regulation

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I. Introduction

The control of broadcasting, more than any other field subjected to regulation, demands, by its very nature, political neutrality. Given that control is deemed necessary,¹ almost total delegation of that control must be made to an independent tribunal in order to avoid charges of political interference with the freedoms of speech and expression.

The presence of the CBC as a *public* corporation, however, raises questions as to the source and substance of the CBC mandate. What body is responsible for creating the goals or objects of this corporation? Who bears the responsibility initially to interpret and shape programming to meet these goals? And who acts as the regulator to ensure that existing programming meets the demands of that mandate as it should properly be interpreted?

In the late 1960s and early 1970s the multilingual as well as multicultural fabric of Canada was recognized in the public sector and was endorsed in particular by the Royal Commission on Bilingualism and Biculturalism. Consistent with this recognition came the suggestion that the CBC incorporate national multilingual broadcasts in its programming to acknowledge the place of a diversity of languages in Canadian life. Pitted against this suggestion, however, was a CBC policy position that, for the most part, prohibited broadcasting in languages other than French and English by its stations.

Evidence of the conflict that developed between the proponents of multilingual broadcasting and the guardians of the CBC's bilingual broadcasting policy has provided a means of studying, admittedly in an isolated fashion, the viability of the structure of regulation provided to control the CBC as a broadcasting entity and has also provided a means for attempting to answer the questions posed above with respect to the source and substance of the CBC

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1. For a discussion on this point refer to A. Beke, *Government Regulation of Broadcasting in Canada* (1971-72), 36 Sask. Law Rev. 39, Chapter 1, Part A

mandate. The conclusions that are drawn cannot be considered definitive since the evidence bears upon only one instance of confrontation in the continuing regulation and control of the CBC. It is hoped, however, that this study demonstrates the difficulties inherent in seeking to control and direct a public broadcasting system without subjecting it to political interference and illustrates the indifference with which both the CRTC and the CBC have on at least one occasion treated public proponents of change.

II. The CBC Mandate

Prior to the *Broadcasting Act* enacted in 1968² the goals of the CBC and the role that it was to play were not clearly defined. Section 29(1) of the 1958 *Broadcasting Act*³ listed the objects and powers for the Corporation, but the direction that: "The Corporation is established for the purpose of operating a national broadcasting service . . ." was the only phrase of significance with respect to purpose. Admittedly, the Corporation was also subjected by section 29(2) to the regulation of the Board of Broadcast Governors which operated under the guidance of section 10:

The Board shall for the purpose of ensuring the continued existence and efficient operation of a national broadcasting system and the provision of a varied and comprehensive broadcasting service of a high standard that is basically Canadian in content and character, regulate the establishment and operation of networks of broadcasting stations, the activities of public and private broadcasting stations in Canada and the relationship between them and provide for the final determination of all matters and questions in relation thereto.

But this section, even in combination with section 29(1), failed to define the clear mandate that was required.

The 1965 Committee on Broadcasting, chaired by R. M. Fowler, found that as a consequence, the CBC had interpreted its own mandate — an interpretation that had seldom been questioned by Parliament and that through a process of legislative omission had stood as the source of the Corporation's future goals and aspirations.⁴ It therefore recommended that the reins of control be tightened — that new legislation be enacted by Parliament defining

2. R.S.C. 1970, c. B-11

3. S.C. 1958, c.22

4. R. Fowler, M. LaLonde, G. Steele, *Report of the Committee on Broadcasting, 1965* (Ottawa: Queen's Printer, 1965) at 125

broad objects of national policy and a statutory mandate for the CBC⁵ and ensuring the total delegation to a regulatory authority of the administrative, financial and programming aspects of the broadcasting system and the task of achieving the goals prescribed.⁶

It is important to note that the Fowler Committee further recommended that the regulatory authority be responsible for the direct supervision of the CBC *including* the definition of the objectives and general broadcasting policy of the Corporation as well as the general form and content of its programming.⁷ It is clear, however, from the general tenor of the Committee's report that it did not envisage two separate sources of the CBC mandate.⁸ The objectives and policy to be defined by the regulatory authority would be those needed to fulfil the mandate determined by Parliament.

The White Paper on Broadcasting that followed⁹ adopted most of the recommendations made by the Fowler Committee. But in this introduction of a restructured broadcasting system, complete with enumerated goals for the CBC,¹⁰ a crucial deviation was made from the Fowler Committee's proposal. The CBC was not to be harnessed completely by the regulatory authority. Though it would be subjected to the regulatory powers of this body "in all matters affecting general broadcasting policy in Canada",¹¹ the Corporation, through its Board of Directors would be free to develop its own programming and operation policy.

What might be seen as a trichotomous hierarchy of policy formulation emerged. At the top, broad policy objectives were to be defined (and redefined) by Parliament. In the middle, policy was to be created, subject to Parliament's scrutiny, by the regulatory authority to implement Parliament's broadly defined objectives. At the bottom, programme policy was to be created by the CBC which

5. *Id.*, at 13

6. *Id.*, at 92-93. This authority, characterized as the Board of Broadcast Governors in the 1958 *Broadcasting Act*, was referred to as the Canadian Broadcasting Authority in the Federal Committee Report; as the Canadian Radio Commission (CRC) during debate in the House of Commons and finally as the Canadian Radio-Television Commission in the 1968 *Broadcasting Act*.

7. *Id.*, at 59 and 119

8. *Id.*, see especially 126

9. The Honourable Judy LaMarsh (at that time Secretary of State), (Ottawa: Queen's Printer, 1966)

10. Many of which were a reproduction of the CBC's interpretation of its mandate. *Id.*, at 15

11. *Id.*, at 8

would need to satisfy the objectives of the Act as well as the scrutiny of *both* the regulatory authority and Parliament.

A statement outlining this aspect of the intended regulatory structure was given during the comments of the then Secretary of State, Judy LaMarsh, on the Bill which accompanied the White Paper on Broadcasting:

The Bill . . . sets out in clear language a broadcasting policy for Canada which includes, for the first time, a mandate for the national broadcasting service operated by the CBC . . . The objects of the regulatory authority . . . will . . . be to regulate and supervise all aspects of the Canadian Broadcasting system with a view to implementing this policy. Similarly, the objects of the CBC are to provide the national broadcasting service in accordance with the mandate which forms an integral part of that policy. Each of these two bodies can exercise its powers only in furtherance of the policies established by Parliament.¹²

Miss LaMarsh also discussed the intended relationship between the CBC, the regulatory authority and Parliament:

The principal weakness of the 1958 Act is its failure to establish a proper relationship between the corporation, the regulatory authority and Parliament. Thus the changes that will have the largest effect on the operations of the CBC are those relating to the authority of Parliament, the government and the Commission . . . Under the new legislation the Commission's authority over the CBC will be clearly defined and will be exercisable only by regulation or conditions of license, all of which must conform to the broad policy enacted by Parliament . . . the CBC should be subject to such regulation and control on the understanding that this does not imply any power to give directions in respect of specific programming (other than by the general regulations or conditions of licenses) . . . the responsibility for programming must rest with the CBC Board and management.¹³

It was the structure reflected in these passages that was adopted with the enactment of the *Broadcasting Act* of 1968,¹⁴ and the CBC mandate, which had previously escaped clear enunciation, finally obtained statutory definition:

12. Can. H. of C. Debates (November 1, 1967) at 3747, on moving for the second reading of Bill No. C-163

13. *Id.*, at 3754

14. R.S.C. 1970, c. B-11; see especially ss. 3, 15, 39 and 47. However, an argument may be made that the Act doesn't allow for CBC policy-making. Subsection 39(1) ties the Corporation to CRTC licence conditions and regulations and subsections(a) through (m) do not provide for policy formulations. Subsection (n) ("do all such other things as the Corporation deems incidental or conducive to

3 (f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character;

(g) the national broadcasting service should

(i) be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion,

(ii) be extended to all parts of Canada, as public funds become available,

(iii) be in English and French, serving the special needs of geographic regions, and actively contributing to the flow and exchange of cultural and regional information and entertainment, and

(iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity;

III. "*We have a policy at CBC: — Multiculturalism, yes; Multilingualism, no.*"

One theme common to the Fowler Committee Report, the White Paper, the presentation of the Broadcasting Bill in the House and the *Broadcasting Act* of 1968 was that the CBC had an obligation to contribute to national unity.¹⁵ Also common to all of these was a bilingual bias.

Though hints of accepting the need for multilingual, as well as multicultural broadcasting, can be found in the Fowler Committee report,¹⁶ the primary recommendation with respect to CBC programming was that the English and French cultures be exposed to each other¹⁷ through the extension of a bilingual network.¹⁸ The White Paper echoed these sentiments — Canadians were "entitled, subject only to practical considerations in the expenditure of public funds, to service in the Canadian official language that they

the attainment of the purposes of the Corporation") might cover this problem. However, an argument of *ejusdem generis* tying "other such things" to maintenance of equipment and making of contracts could be made. A clearer statement of the nature of CBC policy-making is required.

15. *Supra*, note 4 at 12; note 9 at 19; note 12 at 3755 *per* the Honourable Judy LaMarsh; R.S.C. 1970, c. B-11, s. 3 (g) (iv)

16. Mention was made that a reasonable proportion of programmes be aired from other countries and cultures. After discussing the use of Indian and Eskimo Languages on CBC's Northern Service the Committee suggested that "consideration should be given to the feasibility of extending this type of activity to other parts of Canada". *Supra*, note 4 at 192

17. *Id.*, at 131

18. *Id.*, at 125-266

habitually [used]”¹⁹ and the Secretary of State supported these beliefs in the House.²⁰ Finally the *Broadcasting Act* of 1968 gave statutory force to the bias in subsection 3(e):

all Canadians are entitled to broadcasting service in English and French as public funds become available”

and subsection 3(g) (iii):

the national broadcasting service should be in English and French . . .”

In the summer of 1973 “MacTalla an Eilean” (Island Echoes), an entertainment programme using Gaelic in a mixture of spoken word and song during a weekly broadcast by the CBC’s Sydney radio station, CBI, fell victim to this bilingual bias. In mid-August the then executive vice-president of the CBC, Lister Sinclair, heard the program and decided to apply a CBC programme policy that forbade third language broadcasting by its stations. This decision signalled the phasing out of all spoken Gaelic on the CBC airwaves. An uproar ensued to be quieted partly a month later when Mr. Robert Muir, M.P. for Cape-Breton-The Sydneys, was successful in having the matter referred to the House of Commons Standing Committee on Broadcasting, Films and Assistance to the Arts.²¹

The decision to phase out spoken Gaelic on station CBI was consistent with past and present CBC policy. As far back as 1943, CBC management had indicated its intention to broadcast in English and French only. In that year a suggestion was made, during hearings of a House of Commons Special Committee on Radio Broadcasting, that the network carry programming in other languages. The CBC General Manager, James S. Thompson replied simply: “So far as languages other than English and French are concerned, we have not got into that region.”²² From that date to the present the CBC’s policy of benefiting Canadian airwaves with only the English or French tongue has been maintained.

But to every rule there is an exception. The clearest exception to the CBC’s language policy is CBC’s Northern Service, established

19. *Supra*, note 9 at 9

20. Can. H. of C. Debates (October 17, 1967) at 3174, *per* the Honourable Judy LaMarsh

21. Can. H. of C. Debates (September 1, 1973) at 6793

22. N. Flakstad, *Foreign-Language Radio Broadcasting in Canada: Regulations versus Realities*, unpublished paper completed for Journalism 499, Carleton University, 1973, at 28; quoting from Canadian House of Commons Special Committee on Radio Broadcasting, *Proceedings* (Ottawa: Queen’s Printer, 1943) at 86

in 1958, to carry broadcasts for native Indian and Eskimo people in their own languages. To appreciate the scope of this exception, it is useful to note the current status of the Northern Service, based on the annual report of the CBC for the fiscal year 1974-75.

Five medium-wave manned radio stations (at Frobisher Bay, Yellowknife and Inuvik in the Northwest Territories; Whitehorse, Yukon; and Churchill, Manitoba) broadcast in ten native languages and dialects in addition to English and French. As an example of one aspect of this Northern service, station CFYK, Yellowknife, broadcasts each day's proceedings of the MacKenzie Valley pipeline inquiry, conducted by Mr. Justice Tom Berger, in the languages and dialects of the MacKenzie Valley and Delta — Dogrib, Chipewyan, Lacheux, Hareskin, Slavey, Western Inuktituk and English. Reports were also prepared in English and Eastern Inuktituk for distribution to other parts of the North. A plan recently presented to the Government aims at the extension of this northern radio service and the production by native people of their own radio programmes in native languages where necessary or desired.

In addition to medium-wave radio broadcasting, a short-wave service originating from Sackville, New Brunswick broadcasts to the eastern Arctic in Inuktituk and Cree, as well as in English and French. There is also a northern television service (NTS) which includes in its programming a weekly fifteen minute news and information program, "Targtravut", which is broadcast in Inuktituk, and six five-minute programmes per week on the MacKenzie Valley pipeline inquiry which are broadcast in Inuktituk, Indian languages and dialects, and English.

The CBC's deviation from the straight and narrow confines of its English-French broadcasting policy has found expression in the southern regions of Canada as well as in the north. Based on March, 1972 figures, Indian language broadcasts were inserted five minutes per week in the Ontario programme, "Compass North"; for approximately four minutes per week in Saskatchewan's "North Country Fair" and for approximately four minutes per week in Alberta's, "The Native Voice of Alberta".²³ Programmes have been transmitted in Portuguese from St. John's for the benefit of fishermen off the coast of Newfoundland and foreign-language

23. Statistics presented in the House of Commons by the Honourable James Faulkner (Secretary of State), Can. H. of C. Debates (June 27, 1973) at 5113

transmissions were carried for visitors and staff at Expo '67 in Montreal.²⁴

In addition, the Corporation transmits foreign-language programmes to other countries through the Radio Canada International Service by short wave and cable using eleven languages: French, English, Czech, German, Hungarian, Polish, Portuguese, Slovak, Spanish, Russian and Ukrainian.²⁵ It should be noted, however, that this service is, strictly speaking, not a deviation from the CBC's *domestic* English-French broadcasting policy.

A formal attack on the CBC's domestic practice of broadcasting in only English or French or in the Indian or Eskimo languages, found expression in a recommendation made by the Royal Commission on Bilingualism and Biculturalism on October 23, 1969, in Volume IV of its reports. Having studied the cultural contributions of the ethnic groups in Canada, the Commission came to the conclusion, in part, that in broadcasting carried on by the CBC:

there is little justification for proscribing languages other than English French and Indian and Eskimo languages, and there are considerable grounds for recognizing the place of other languages in Canada. There are of course, difficulties in such recognition. The number and the location of Canadians who want to listen to broadcasts in other languages, the nature of the programmes that they would listen to, the allocation of time among the language groups, and the interest of sponsors in other language programmes would all require thorough investigation. The question of if and how broadcasting contributes to cultural retention would also be worth exploring. However, the possibility of broadcasting in languages other than English and French should not be automatically rejected. Therefore, *we recommend that the CBC recognize the place of languages other than English and French in Canadian life and that the CBC remove its proscription on the use of other languages in broadcasting.*²⁶

It was further recommended that the CBC participate with the CRTC in undertaking studies "to determine the best means by which radio and television can contribute to the maintenance of languages and cultures."²⁷

24. Can. 4 *Report of the Royal Commission on Bilingualism and Biculturalism: The Cultural Contribution of the Other Ethnic Groups* (Ottawa: Queen's Printer, 1969) at 183

25. *Per* the Honourable James Faulkner, Secretary of State, *supra*, note 23 at 5113

26. *Supra*, note 24 at 191 (recommendation 9), emphasis in original

27. *Id.*, at 192 (recommendation 10)

These and fourteen other recommendations lay dormant in the hands of the Liberal Government for two years. They surfaced again to form the foundation of the Government's policy of "multiculturalism within a bilingual framework" as announced by Prime Minister Trudeau on October 8, 1971.²⁸ Though the spirit of the recommendations was accepted by all four parties in the House of Commons the manner of their implementation, in part, was felt to require further study. To accommodate this need a "culture development program" (one of six related programs) was devised, with a year's mandate, in part to produce data on the precise relationship of language to cultural development and to determine the best means by which radio and television could contribute to the maintenance of language and cultures.²⁹ The CRTC and CBC were slated to cooperate in this latter effort under the direction of the Citizenship Branch of the Department of the Secretary of State.

It would seem that the CBC was conscripted for this task.³⁰ Voluntary participation was unlikely in light of a negative response by the Corporation to the Royal Commission's recommendation that the proscription on the use of other languages in broadcasting be removed.³¹ Bilingual broadcasting, with the exception of the use of Indian and Eskimo languages by the Northern Service, was, to the CBC, all that was required upon a proper interpretation of its mandate.

On February 19, 1973, the Corporation's policy weathered the scrutiny of a CRTC hearing. The Corporation was seeking approval for the takeover of two privately owned French-language AM stations in western Canada. One of the stations, CKSB in St. Boniface, Manitoba, had, until early 1973, been participating in multilingual broadcasts, scheduling a total of six and one-half hours a week in six other languages (Hebrew, German, Italian, Polish, Portuguese and Ukrainian). Some of the programmes had been carried by CKSB for more than twenty years and were produced by volunteers.³² CBC ownership under its espoused policy would

28. Can. H. of C. Debates (October 8, 1971) at 8545

29. *Id.*, Appendix, at 8582

30. Evidence given by Pierre Juneau, the then Chairman of CRTC, before the Standing Committee on Broadcasting, Films and Assistance to the Arts, indicates little CBC involvement in the research undertaken; Can. H. of C. Standing Committee on Broadcasting, Films and Assistance to the Arts, *Proceedings*, No. 26 (November 15, 1973) at 16, 35

31. Can. H. of C. Debates (October 8, 1971) Appendix, at 8584

32. Flakstad, *supra*, note 22 at 31; see also, Can. H. of C. (March 15, 1973) at 2282

mean the end of this tradition.

A total of six representations made by interested cultural groups at a CRTC hearing held in *Montreal* at the CBC's expense,³³ did not quarrel with CBC ownership, *per se*. However, they did object strongly to the implementation of a policy which would in effect banish multilingual broadcasting from CKSB's airwaves.

The objections made were to no avail. The transfer of CKSB to the CBC was approved by the CRTC in its decision of March 29, 1973. At the same time a proposal by the Corporation to make time available to the ethnic groups involved to broadcast for a period of twelve months was deemed to be "reasonable and equitable". This proposal however was not a softening of the CBC's established bilingual broadcasting policy. It was simply made to provide time for transfers to other stations in the Winnipeg area.³⁴

As a result the Corporation's interpretation of its mandate remained intact and was fortified by at least the *indirect* approval of the CRTC.³⁵

However, the CKSB controversy did serve to focus the attention of certain members of the opposition in the House of Commons on the question of multilingual broadcasting and to nurture demands for amendments to the Broadcasting Act directing the use of other than official languages by the CBC,³⁶ and for government instructions to the CBC to change its bilingual policy.³⁷

Rather than implement the relevant recommendations of the Royal Commission on Bilingualism and Biculturalism as was being requested, the Government saw fit to create seven new multicultural programmes for the nation. On May 17, 1973, the Minister of State in charge of Multiculturalism, the Honourable Stanley Haidasz,³⁸

33. Representations by the Honourable Mr. Haidasz, then the Minister responsible for Multiculturalism, to the CRTC to have the hearing transferred to Winnipeg to accommodate further interventions evidently failed. The final arrangement would appear to be a compromise extended by the CBC. Can. H. of C. Debates (February 8, 1973) at 1079. A petition for a rehearing to be held in Winnipeg was made to the Governor-in-Council, but failed. Can. H. of C. Debates (May 25, 1973) at 4091.

34. Note that all the former CKSB ethnic producers had evidently obtained time on other stations before this decision, rendering the CBC's phasing-out period meaningless. Flakstad, *supra*, note 22 at 37.

35. The CRTC decision did not direct itself to the merits of the CBC policy.

36. Can. H. of C. Debates (March 15, 1973) at 2248-49; (May 16, 1973) at 3830; (May 30, 1973) at 4277.

37. Can. H. of C. Debates (April 16, 1973) at 3359; (May 16, 1973) at 3830.

38. Dr. Haidasz was appointed as Minister of State responsible for multiculturalism in November 1972. Later multiculturalism found its place in the Ministry of Labour under the stewardship of the Honourable John Munroe.

tabled documents respecting these programmes, which announced the formation of a Canadian Consultative Council on Multiculturalism. Money was to be made available to programmes aimed at increasing awareness of Canada's multicultural diversity as well as into older programmes, such as the multicultural centres programme, started after Prime Minister Trudeau's October 8, 1971 announcement. Assistance was to be given to projects in the areas of film, radio and television broadcasting and folk festivals. But, nowhere was there a reference made to the issue of potential CBC multilingual broadcasting.

In the meantime, fortified by the favourable CKSB decision, the CBC ordered the phasing out of spoken Gaelic in CBI's "MacTalla an Eilean". In September 1973 it accompanied this decision with a reiteration of its programme policy — a long-hand form of what Lister Sinclair had described in Sydney as "multiculturalism, yes; multilingualism, no":³⁹

By virtue of the policies arising from the directives in the Broadcasting Act and by reason of the ethnic diversity of its audience, the CBC has long practiced a policy of cultural pluralism in its programming. It intends to continue to affirm and reflect in its programmes the multicultural riches and multi-racial characteristics of Canadian Society . . .

However, the CBC will not engage in multilingual broadcasting . . . because in so doing it would be departing from the express priorities laid down in the Broadcasting Act to provide complete services in both official languages. The CBC makes an exception only for the original inhabitants of the country, the Indian and Eskimo, to whom the Northern Service broadcasts in several languages and dialects.⁴⁰

With Mr. Muir's successful motion in the House of Commons,⁴¹ the Standing Committee on Broadcasting, Films and Assistance to the Arts was given the opportunity to deal directly with this interpretation of the CBC mandate.

IV. *The CBC's Policy Under Review*

(i) The Relative Merits of Multilingual Broadcasting On The CBC

39. *Halifax Chronicle-Herald*, August 17, 1973, at 2

40. CBC Program Policy, *Multicultural and Multilingual Broadcasting*, September 1973

41. An earlier motion by a Mr. Yewchuk M.P. in May 25, 1973 to have the CBC multilingual issue before the Standing Committee had failed to obtain unanimous approval. Can. H. of C. Debates (May 25, 1973) at 4091

The Standing Committee sat for ten sessions and heard evidence from Laurent Picard (President of the CBC), Lister Sinclair (at that time Executive Vice-President of the CBC), R. C. Fraser (Vice-President, Corporate Affairs of the CBC), Keith Spicer (Commissioner of Official Languages), Pierre Juneau (at that time Chairman of the CRTC), Harry Boyle (at that time Vice-Chairman of the CRTC), witnesses from L'Association Canadienne — Francaise de l'Ontario, witnesses from the Ukrainian Canadian Committee and the Ukrainian Canadian University Students Union, the representative of the Italian community on the Multicultural Council and a representative of the Italian Business and Professional Men's Association of Ottawa, witnesses from the Canadian Folk Arts Council and finally, a representative of The Gaelic Society of Cape Breton.

It should be remembered that prior to these sessions attention had already been focused on the multicultural and multilingual nature of the Canadian identity. Concern for the maintenance of different cultures had been expressed in the fourth report of the Royal Commission on Bilingualism and Biculturalism together with the recommendation that the CBC remove its proscription on the use of other languages in broadcasting. The Government's position, however, as announced by Prime Minister Trudeau on October 8, 1971, was careful to preserve the official status of the English and French languages — multiculturalism was to exist within a bilingual framework.

In presenting its case to the Standing Committee, the CBC ignored the recommendation of the fourth report of the Royal Commission on Bilingualism and Biculturalism. The Corporation's policy of "multiculturalism, yes, multilingualism, no", was said to be consistent with the Government's position of "multiculturalism within a bilingual framework".⁴² It was also argued that the discontinuance of Gaelic on CBC in Cape Breton was a decision consistent with a bilingual mandate tacitly approved in the past and directly approved by the 1968 Act. In addition, the exception made to serve Indians and Eskimos in their native language was based on a "historical interpretation of the mandate supported by the Commission [CRTC] and the Broadcasting Committee".⁴³

42. Can. H. of C. Standing Committee on Broadcasting, Films and Assistance to the Arts, *Proceedings*, No. 24 (November 8, 1973) at 35, *per* Lister Sinclair

43. *Id.*, No. 23 (November 6, 1973) at 21, *per* Mr. Picard

When asked whether other languages were excluded under the mandate, Mr. Picard, at one point, stated:

There is no exclusion of third languages in the mandate; we recognize that, but the work we are doing in French and English is far from complete.⁴⁴

Later he stated that:

. . . our interpretation of the mandate, of the history of the Corporation, the work of Royal Commissions, the Official Languages Act, and broadcasting committee statements of the past, seems to indicate that French and English are the mandate of the Corporation and no other languages.⁴⁵

He then returned to his earlier position:

I recognize that the mandate does not prevent us from using a third language; it does not say anything about that.⁴⁶

Nevertheless, a crucial part of the first statement — the obligation to complete the extension of bilingual service across Canada — remained central to the CBC's reasoning.⁴⁷

The CRTC also took the position that the CBC was operating within the parameters of the Corporation's statutory mandate.⁴⁸ While conceding that the Commission had the power to promote multilingual broadcasting, Mr. Juneau was not prepared, however, to do so by regulation. Because of the poor reception given to the Canadian content rule he preferred to depend on "the emotions, the talent and the goodwill of people" within the broadcasting system to provide the service requested.⁴⁹

To both the CBC and the CRTC, the private broadcasting sector, under existing regulatory control,⁵⁰ provided a better forum for the

44. *Id.*, at 13

45. *Id.*, at 13-14

46. *Id.*, No. 24 (November 8, 1973) at 25

47. This theme was also prevalent in the House. The Parliamentary Secretary to the Secretary of State answered a request for increased multicultural broadcasting by the CBC in this way:

. . . [A] lot remains to be done in the field of broadcasting in the two official languages of Canada: there are places where there is no service in French or English, or where these must be improved, which are assignments of major importance to the CBC, and will continue to take priority until all such projects have been realized.

Can. H. of C. Debates (April 16, 1973) at 3359

48. *Supra*, note 42, No. 26 (November 14, 1973) at 28, *per* Mr. Juneau

49. *Id.*, at 48

50. Section 17 of the AM and FM Regulations provides that the Commission may, after a public hearing authorize a station to broadcast up to forty per cent of its

use of third languages. For Mr. Picard, multilingualism was a regionalized need and could therefore be handled by local private stations which were not burdened with a national mandate.⁵¹ The primary goal of national unity would be served by using the CBC network to communicate regional diversity to different parts of the country — in French and English. Cultural maintenance would have to be the goal of private networks within the system. And Mr. Juneau argued that the load would not overburden private stations. He went so far as to suggest that there was an unused potential in this sector of the broadcasting system⁵² and referred to the service already being provided by private “multilingual” stations in Montreal, Toronto, Winnipeg and Vancouver.⁵³

Another argument raised in defence of the CBC’s policy was the technical chaos that would result if every ethnic group in Canada (there are fifty-two) had to be accommodated by the CBC. The CRTC was especially concerned with the potential administrative difficulties involved and mathematical proportioning required and warned of increased budget requirements for the Corporation.

Common to the advocates of multilingual broadcasting was a belief in the vital role of language in culture retention and the necessity of multilingual broadcasting to maintain Canadian cultural diversity. This proposition had the notable support of the fourth report of the Royal Commission on Bilingualism and Biculturalism.⁵⁴ In addition, it was argued that the CBC had an important role to play as a reflector rather than interpreter of the

programme time in languages other than English or French. *Radio (A.M.) Broadcasting Regulations*, S.O.R./64-49, s. 17(4); *Radio (F.M.) Broadcasting Regulations*, S.O.R./64-249, s. 17(4)

51. *Supra*, note 42, No. 23 (November 6, 1973) at 23

52. *Id.*, No. 26 (November 15, 1973) at 32

53. No legal or official category of “multilingual” stations exists in the CRTC regulations—stations are licensed as English, French or bilingual but allowed to carry more than the two official languages. See, CRTC Research Branch, *Multilingual Broadcasting in the 1970’s* (Ottawa: Information Canada, 1974) at 5

54. “Culture and the language that serves as its vehicle cannot be disassociated.” *Supra*, note 24 at 13. It is also supported in a CRTC study, *Multilingual Broadcasting in the 1970’s*:

The contributions of third language broadcasting to [the preservation of minority cultures] are probably both direct and indirect. Directly, third language broadcasting probably contributes to linguistic and cultural retention by providing some practice for the listener in the use of the language. Indirectly, such broadcasts [do so] by providing a . . . vehicle to promote and facilitate the personal interaction between speakers of a particular language.

Supra, note 53 at 31

multicultural and multilingual makeup of Canada; that multilingual broadcasts should be given national rather than regional coverage and that ethnic communities (defined by language rather than geography) should be given representation on the air for the taxation dollars contributed by them to the public broadcasting service.

In addition, several criteria were proposed that would control access by ethnic groups to the CBC airwaves. One, common to many of the representations made, was “quality” by which a screening process could be developed by setting quality production standards. Another criterion suggested involved measuring community demand and capacity: the community would have to show a demand for the programming and it would have to be able to supply the CBC with human and material resources to support that demand. To dispel the fear of high costs, the proponents of multilingual broadcasting first noted that there would probably be only six or seven ethnic groups organized and interested enough to meet the above criteria and then pointed to the costs involved in producing “MacTalla an Eilean” — \$150 per week or \$7,200 per year — as compared to the budget of the CBC of over \$200,000,000 in Parliamentary appropriations alone.⁵⁵

As noted above, the CBC stressed the primary need to complete the extension of bilingual services. What is interesting is that L’Association Canadienne — française de l’Ontario agreed. They argued that bilingualism was the cornerstone of multiculturalism and, as such, had to be firmly established as a priority. They, however, would not object to multilingualism on the CBC if *additional* funds could be found to promote this aspect of cultural life.⁵⁶

(ii) Aspects of Regulation

Besides providing a full discussion of the relative merits of multilingual broadcasting by the CBC, the evidence before the Standing Committee serves to highlight certain aspects of the regulatory structure discussed in Chapter 1.

Under the *Broadcasting Act* of 1968 the CBC is subjected to regulation by the CRTC (subsection 39(1)) and is also required to report annually to Parliament through the Secretary of State (section

55. Figures from the CBC Annual Report 1974-1975 at 41 show \$290,700,149 as representing funds allocated to the CBC from Parliament.

56. *Supra*, note 42, No. 27 (November 22, 1973) at 11, 12, 16

47).⁵⁷ In addition, Parliament has traditionally carried out a supervisory role through Special Committees on Broadcasting of which the Standing Committee is one.

Whether Parliament or the CRTC is to enjoy greater control over CBC policy formulation, however, is not clear. The advantages of delegating responsibility to an administrative body (such as time and expertise) and the sensitive nature of broadcasting in general favour greater control of the CBC by the CRTC. For these reasons the Fowler Committee Report had recommended that there should be less direct supervision of the CBC by Parliament and less interference with operational decision making.

However, from the evidence given to the Standing Committee by the CBC it is apparent that the CBC has been able to enjoy a certain degree of independence from the CRTC and that in fact the Corporation is more inclined to seek clarification of policy issues from Parliament than from the Commission.⁵⁸ The Commission, in turn, indicated that it would not review CBC operational decisions unless they appeared to be *obvious* offences to the Broadcasting Act.⁵⁹ Thus the CRTC seemed prepared to leave the propriety of most CBC decisions to Parliamentary supervision.

The decision to disallow multilingual services provided by the CBC is justifiably part of the programme policy formulation falling within the domain of the Corporation. Consequently it is not surprising that the decision was made by the Corporation's Board of Directors⁶⁰ without consultation with the CRTC,⁶¹ the Secretary of State, Department of Communications or the Cabinet⁶² and in line with what the Board of Directors interpreted the CBC's mandate to be under the Act.⁶³

It can not be denied that this interpretation was reviewed by the CRTC during the takeover bid of CKSB in St. Boniface, but the Commission's decision neither discussed the representations made

57. However, this has been debated and the suggestion has been made that the CBC and CRTC annual reports be tabled in the House through the Speaker rather than the Secretary of State to allow greater access to the Corporation for Parliament. Can. H. of C. Debates (December 20, 1967) at 5684

58. *Supra*, note 42, No. 25 (November 6, 1973) at 13, and No. 25 (November 13, 1973) at 7

59. *Id.*, No. 26 (November 15, 1973) at 26

60. *Id.*, No. 24 (November 8, 1973) at 9, *per* Mr. Picard

61. *Id.*, No. 26 (November 15, 1973) at 19, *per* Mr. Picard

62. *Id.*, No. 23 (November 6, 1973) at 20, *per* Mr. Picard and No. 24 (November 8, 1973) at 31

63. *Id.*, No. 23 (November 6, 1973) at 13, *per* Mr. Picard

by the ethnic groups in Montreal nor engaged in a reasoned explanation of what in the end was an endorsement of the CBC's language policy. It is important to ask whether a more sensitive Commission taking the time to discuss publicly the merits of what on the surface appeared to be an arbitrary CBC policy would have prevented the need for Parliament's intervention in the matter.

This is not to say that the CRTC necessarily should or could have prevailed upon the CBC by regulation to amend its policy. From a legal perspective the *Broadcasting Act* does not prohibit the use of third language broadcasting by the CBC. CRTC regulations, however, must be consistent with the "Broadcasting Policy for Canada" enunciated in section 3 of the Act. It is difficult to construe this provision as providing for the mandatory use of languages other than French and English.

Subsection 3(b) demonstrates an intention in the Act to "safeguard, enrich and strengthen" the cultural fabric of Canada, but relates specifically to the Canadian ownership and control of the broadcasting system.⁶⁴ Subsection 3(c) creates the right "to receive programs" but not the right to receive these programs in several languages. Subsection 3(e) does create a right to English and French programming as public funds become available. An argument might be made that "predominantly Canadian in content and character" as used by subsection 3(f) to describe a requirement of the national broadcasting service, necessitates the use of third languages. This is dependent on equating Canadian "character", *as used in the subsection*, to the multilingual and multicultural character of Canada. Success here, though possible, is not probable. Nothing under subsection 3(g) is mandatory because of the use of the word "should". Therefore arguments that subsections 3(g) (iii) and 3(g) (iv) refer to multilingual broadcasting by the use of the phrases "serving the special needs of geographic regions and actively contributing to the flow and exchange of cultural and regional information and entertainment" and "provide for a continuing expression of Canadian identity" respectively, are of no consequence.⁶⁵ Therefore, it is submitted that a successful

64. Nevertheless, an interesting argument was made by the representative for the Ukrainian Canadian Committee. On the premise that language is necessary to retain culture it was argued that multilingual broadcasting was necessary to "strengthen the cultural fabric of Canada" and therefore was mandatory within the system. *Id.*, No. 28 (November 27, 1973) at 22

65. During debate on the Broadcasting Bill, the Honourable Judy LaMarsh stated that subsection 3 (g) (iii) was not intended to provide third language broadcasting.

argument that the *Broadcasting Act* provides for the mandatory use of third languages by the CBC *cannot* be made. Regulations by the CRTC requiring other languages to be used by the CBC would therefore be contrary to the "broadcasting policy enunciated in section 3" and, as a consequence, beyond the objects of the Commission set out in section 15.⁶⁶

The alternatives are that in the face of public proponents of change including a recommendation by a Royal Commission, both the CRTC and the CBC could have responded articulately in favour of the *status quo*, or could have attempted to cooperate together and adopt the changes desired, or simply could have refused to consider the matter thereby necessitating Parliament's intervention to provide the required forum for public sentiment.

The indifference and lack of flexibility of both the CRTC and CBC led, in this case, to a realization of the last alternative. In the end, a regulatory structure that should have operated to minimize interference in broadcasting by Parliament and to maximize the supervision and control of the CBC by the CRTC, failed to prevent the necessity for Parliament's review, through its Standing Committee, of the CBC's policy decision.

(iii) Standing Committee Recommendations

In reviewing the CBC's policy decision the Standing Committee was faced with its own alternatives. They could recommend that the *Broadcasting Act* be amended to require the CBC to adopt multilingual broadcasting; they could rely on the cooperation of both the CRTC and the CBC to provide for multilingual broadcasting and to respond more sensitively in the future to the public's demands, or they could decide that the matter, in fact, did not warrant a change in the *status quo*.

In the end, the Standing Committee failed to settle the matter before it. Though they decided that an amendment to the *Broadcasting Act* was not necessary to provide for multilingual broadcasting by the CBC they also decided that they could not resolve the extent of the demand for third language broadcasting,

The governing words of that subsection were "in English and French". Can. H. of C. Debates (January 29, 1968) at 6084

66. A weak argument may be made that "with a view to implementing the broadcasting policy enunciated in Section 3 of this Act" does not tie the Commission *exclusively* to that policy; that it could expand the policy to include mandatory multilingual broadcasting. The argument, however, is contrary to the whole intention and structure of the Act.

the number of language groups that would be involved, the type of programming desired, the geographic needs, the availability on private stations and the budgeting conditions required *if* the CBC were to become involved. Therefore, all that they could do was to recommend that a study be conducted:

by a group comprised of representatives of the CBC, the CRTC, the Secretary of State and the Minister of State for Multiculturalism, whose duty it would be to determine a formula for third language broadcasting in a way that would not diminish the status of the two official languages of Canada.⁶⁷

In the meantime, the use of Gaelic would continue in "MacTalla an Eilean" and the other third language programmes on CKSB would be reinstated (if they so requested) until a multilingual broadcasting policy was determined.

V. *Recent Developments*

Gaelic continues to be broadcast on the programme "MacTalla an Eilean". It occupies forty-five minutes in a Saturday morning 8:15 time slot. The use of Gaelic is intended to continue indefinitely.⁶⁸

It should be noted that a future attempt to remove Gaelic from the air-waves may be prevented through the provisions of the *Official Languages Act*.⁶⁹ Section 38 provides that:

Nothing in this Act shall be construed as derogating from or diminishing in any way any legal or customary right or privilege acquired or enjoyed either before or after the 7th day of September, 1969 with respect to any language that is not an official language.

Evidence given before the Standing Committee by the Commissioner of Official Languages indicated that a three or four year use of a language would be sufficient to satisfy the term "legal or customary right or privilege" found in the above provision. Gaelic has been spoken on CBI's "MacTalla an Eilean" since May, 1971 — therefore, for almost two and one half years prior to CBC's phasing out order of August, 1973 and for about five years to the present.

67. *Supra*, note 42

68. *Per* Bert Wilson, Location Manager, Station CBI, Sydney, Nova Scotia in correspondence dated February 19, 1976

69. R.S.C. 1970, c.0-2. This Act was enacted to make English and French the official languages of Canada.

But the Commissioner interpreted the Act to require proof that the *Official Languages Act* itself was being used to restrict the rights protected under section 38. He had looked into the St. Boniface episode, had found that the *Official Languages Act* was not being used to derogate a section 38 right or privilege, and had therefore decided that he had no jurisdiction. The same was held true for the case of Gaelic in Sydney, Nova Scotia.⁷⁰

The CBC, however, did in fact use the *Official Languages Act* to support its language policy during the Standing Committee hearings,⁷¹ and continues to do so as evidenced in the Annual Report of the CBC for the fiscal year 1974-75:

In accordance with the *Official Languages Act*, the CBC must ensure that the public can be served in both languages . . .⁷²

Therefore, even adopting the Commissioner's narrow interpretation of the *Official Languages Act*, it can be argued on the evidence, that this Act *is* being used to derogate from a customary privilege protected by section 38. In the event that spoken Gaelic ceases to be broadcast in the future by CBI because of the application of the CBC's language policy, intervention by the Commissioner would seem to be warranted.

It will be recalled that the Liberal Government in 1971, in response to recommendations 9 and 10 of the Royal Commission on Bilingualism and Biculturalism, devised a "culture development program" with a one year mandate to, amongst other things, produce data on the precise relationship of language to cultural development and to determine the best means by which radio and television could contribute to the maintenance of language and culture. Four years later "Non-Official Languages: A Study in Canadian Multiculturalism" emerged. The study was coordinated through the Multiculturalism Directorate of the Department of the Secretary of State and published through the Minister Responsible for Multiculturalism. Although the CRTC and the CBC made inputs to this study, most of the work was done through private

70. However, he demonstrated a willingness to conduct an investigation informally which he claimed was "sometimes quite as effective as using the Act". *Supra*, note 42, No. 25 (November 13, 1973) at 36. But note that the Commissioner did in fact launch a *formal* investigation into the CBC's decision to curtail Gaelic broadcasting: *Mail Star*, December 1, 1973.

71. *Supra*, note 42, No. 25 (November 13, 1973) at 35-36 and No. 23 (November 6, 1973) at 14

72. CBC Annual Report 1974-1975 at 24

consultants.⁷³ The report is primarily statistical data compiled and discussed in relation to five centres — Montreal, Toronto, Winnipeg, Edmonton and Vancouver. Its primary purpose was to provide information for the creation of policy. Therefore no policy proposals are offered.

The first annual report of the Canadian Consultative Council on Multiculturalism⁷⁴ was presented to the Honourable John Munro, Minister Responsible for Multiculturalism on December 14, 1974 and released with his permission in 1975. Of significance are the following observations and recommendations:

The acceptance by the government in October, 1971 of the recommendations of the Report of the Royal Commission on Bilingualism and Biculturalism (Book IV) and the formal adoption of a policy on multiculturalism was not reflected in the programming of the publicly-owned network (CBC) and there is regretfully no suggestion that the multicultural reality of Canada's peoples will find expression on the network in the foreseeable future.

Even more disturbing is the action of the CBC cancelling last year its long-established Gaelic language broadcasting in Cape Breton.

Whether or not this event was intended to be a challenge to, and provocation for, the multiculturalism policy may be a matter of academic speculation for those outside the Council. The Council has regarded the action as both, and expresses its regret for the CBC's decision.

It is not satisfactory for either the CRTC or CBC to explain that programs of a multicultural nature should be broadcast on private stations and bid for by the respective cultural communities, or to suggest that more multilingual broadcasting stations will be licensed.

The simple and stark reality which the recommendations of the Council wish to express, is that the CBC as a publicly-owned network bears the responsibility to project Canada to Canadians — as the country it is — multicultural.

It is recommended that:

1(b) The Minister urge the CBC to provide programming in other languages in addition to English and French on radio and television.

Delegates at a national conference on multiculturalism held on

73. *Per* Yvon Gauthier, Broadcast Policy Advisor, Arts and Culture Branch, Department of the Secretary of State, in correspondence dated March 9, 1976.

74. *Supra*, at p. 176

the weekend of February 14 and 15, 1976, debated the CBC language policy and called for multilingual broadcasting to prevent the "Coca Cola homogenization and destruction of cultures".⁷⁵

A multilingual broadcasting study group was set up under the mandate of both the recommendation of the Fourth Report of the Royal Commission of Bilingualism and Biculturalism and the recommendation of the Standing Committee on Broadcasting, Films and Assistance to the Arts. At first there was confusion as to whether the report would be made to the Standing Committee or the Minister involved — Mr. J. Munro (Minister of Labour) and Mr. Faulkner (Secretary of State). This was resolved in favour of a *confidential* report to the Ministers. A report was presented to the Ministers on January 31, 1974. The Ministers have not yet determined what course of action will be taken.⁷⁶

Whether the CBC will of its own initiative adopt a multilingual language policy is far from certain. The Annual Report of the Secretary of State for the year ending March 31, 1975 makes no mention of a multilingual broadcasting policy being pursued by that Department's Broadcasting Branch. Emphasis was still on extending the national broadcasting service in both official languages to all Canadian communities with a population of five hundred or more. The Director's report within the 1974-75 Annual Report of the CBC mentioned that the Board of Directors had reviewed a variety of financial, programming and operational matters including questions of operating budgets, the CBC's new symbol and corporation identifications programme and the extension of CBC coverage and community broadcasting in remote communities. No mention was made that the prospects for multilingual broadcasting were even being considered. However, in the same report, reference was made to 1978 as the target date for completing the extension of CBC bilingual services. Upon this completion the Corporation will be faced with two alternatives — to refine the bilingual services it has so actively pursued to establish or to begin work in recognition of a multilingual mandate. It is therefore possible that the 1980s will summon a new era for the character of CBC broadcasting.

VI. *Conclusions*

The need for a restructuring of the broadcasting system to harness

75. *Per* Rosemary Brown, a New Democratic member of the British Columbia Legislature. *Globe and Mail*, February 16, 1976 at 9

76. *Supra*, note 73 at 2

the independence of the CBC and limit interference by Parliament was central to the Fowler Committee's Report. In partial recognition of this need the *Broadcasting Act* of 1968 incorporated the CBC within a hierarchy of control which provided for regulation of the Corporation by the CRTC. However, the regulatory structure that was created preserved an element of both CBC independence and Parliamentary interference. Programme policy initiative was left in the hands of the Corporation to be developed within the confines of a statutory mandate and supervision of the Corporation was allotted to Parliament as well as the Commission.

An increased awareness of the multicultural and multilingual identity of Canada served to test the character of regulation within this new structure. Independently of the advice of either the CRTC or Parliament the CBC entrenched a bilingual broadcasting policy in face of public demands that the Corporation abandon its proscription on the use of languages other than French or English. The policy was said to be consistent with the Corporation's statutory mandate — a mandate that found its source more in the CBC's self-proclaimed policy of the past than in the relevant sections of the 1968 Act. And although the CRTC provided a forum for discussion of this matter in Montreal when CKSB of St. Boniface fought to retain its multilingual status, the Commission failed in its decision to articulate any reasons for its support of the CBC's policy and failed even to discuss the representations that had been made. Therefore, the CBC's independence (bordering in this case on arrogance) and the CRTC's failure to make an adequate response led to Parliament's intervention through its Standing Committee. But even Parliament's intervention failed to settle the matter. Because of its propensity to study rather than govern, Parliament failed to resolve the status of the CBC's policy and the future of multilingual broadcasting remains unclear.

The absence of effectual regulation witnessed in this case need not be blamed on the structure for regulation provided by the 1968 Act. Given a more adequate response by either the CBC, the CRTC or Parliament the matter might well have been settled. It is therefore not difficult to conclude that an increased sensitivity by the CBC and the CRTC is required to prevent unnecessary and fruitless intervention by Parliament and that future public proponents of change should be met with reason and flexibility such as will allow in the end for a more fluid and satisfactory administration of the broadcasting system.